

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 10/761,864 Confirmation No.: 3151  
Applicant : Richard P. WHITE, *et al.*  
Filed : January 20, 2004  
Title : AN UNSOLICITED MESSAGE DIVERTING COMMUNICATIONS  
: PROCESSOR  
Art Unit : 2444  
Examiner : Paul H. KANG  
Docket No. : EGT-005-1C

**Mail Stop AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TERMINAL DISCLAIMER**

Dear Sir:

Pending claims 1-15 of the present application are subject to a provisional nonstatutory obviousness-type double patenting rejection as being allegedly unpatentable over claims 1-20 of copending United States Patent Application No. 10/761,883, claims 1-15 of copending United States Patent Application No. 10/761,894, and claims 1-24 of copending United States Patent Application No. 10/972,765.<sup>1</sup> *See* Office Action at page 2 *et seq.* In order to overcome this double patenting rejection, Applicant hereby submits the following disclaimers.

The filing of the terminal disclaimer to obviate the double patenting rejection is not an admission of the propriety of the rejection. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991) (“filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.”).

**I. U.S. Patent No. 7,490,128**

The owner, Engate Technology Corporation, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of

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<sup>1</sup> U.S. Patent Application No. 10/761,883 issued as U.S. Patent No. 7,490,128, on February 10, 2009.

the full statutory term prior patent No. 7,490,128 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later: expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321; has all claims canceled by a reexamination certificate; is reissued; or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

## **II. United States Patent Application Nos. 10/761,894 and 10/972,765**

The owner hereby further disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending references Application Number 10/761,894, filed January 20, 2004, and Application No. 10/972,765, filed October 25, 2004, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference applications may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference applications. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said reference applications, "as the term of any patent granted on said reference application may be shortened

by any terminal disclaimer filed prior to the grant of any patent on the pending reference application,” in the event that: any such patent: granted on the pending reference applications: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Applicant is concurrently submitting the terminal disclaimer fee pursuant to 37 CFR 1.20(d).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

SAN DIEGO IP LAW GROUP LLP

Dated: December 7, 2009

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